

Untitled

May 22, 2001

Mary L. Cottrell
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts, 02110

Re: Bay State Gas Company, D.T.E. 00-99

Dear Ms. Cottrell:

Pursuant to the procedural schedule established by the Hearing Officer, the Attorney General addresses Bay State Gas Company's ("Bay State" or "Company") November 3, 2000, filing with the Department of Telecommunications and Energy ("Department") in regard to its 1995 contract with the Portland Natural Gas Transmission System ("PNGTS") partnership. Bay State's filing was made in response to an Order dated July 28, 2000, in which the Department required the Company to make a filing so that the Department could determine whether the Company's decision to acquire firm pipeline capacity through a twenty-year agreement with an affiliate was prudent and in the public interest. Bay State Gas, D.T.E. 98-86, p. 27 (2000). Notwithstanding the issuance of various orders since 1994 in connection with the PNGTS transaction, the Department has consistently reserved any determination on the prudence and public interest of the transaction in light of the evolving market conditions and has cautioned Bay State that future proceedings "will likely affect the recovery of costs associated with these contracts." Bay State Gas Company, D.P.U./D.T.E. 95-125 (March 30, 1998 letter order); Bay State Gas Company, D.P.U. 93-129, pp. 50-51 (1996) and D.T.E. 98-86, pp. 26-27. (1)

The Attorney General submits with regard to the recoverability of potential "stranded" costs that could result from a future relaxation of the current requirement that migrating customers take a pro-rata share of existing capacity (i.e., "mandatory assignment"), the Department should conclude that the contracts in question were neither prudent nor in the public interest. Bay State was fully on notice and aware of the pending changes in the structure of the gas market. Whatever its merits from a business or regional development perspective, the Company's commitment to a 20 year contract for pipeline capacity with an affiliate under open-ended pricing terms(2) in these circumstances, the decision was not, by any standard, either prudent or in the public interest if based upon an expectation that its customers would bear the risk of the market value of that capacity. (3)

As a factual matter, the supporting evidence offered by the Company to demonstrate that the contract was prudent and in the public interest does not detract from this conclusion. The results from its 10-year "resource optimization model" should be disregarded as the Company could not provide any backup or supporting information(4) and, in any event, the underlying analysis was not sufficiently robust to consider changes in scope and cost of the magnitude that in fact occurred. Tr. pp. 74-77. Its so-called "net benefits" analysis is equally lacking in probative value because it does not consider the gas rate impact on non-migrating consumers in the event the Department does not maintain a mandatory assignment regime. Tr. pp. 81-84; BSG-1, Appendix C. Although Bay State, either as a distribution company or as a pipeline

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owner, may consider that a sufficient basis on which to commit its own money, it is not an adequate basis upon which to commit its customers' money.

In conclusion, the Attorney General urges the Department to find that recovery of PNGTS costs will be on a different footing than that of other previously approved long term transportation arrangements. Neither the Company's level of awareness of the emerging competitive gas supply market, nor the quality of the evidence submitted to support the filing, would justify an eventual recovery of stranded costs associated with the PNGTS project.

Respectfully submitted,

George B. Dean
Alexander J. Cochis
Assistant Attorney General
Regulated Industries Division

cc. Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Bay State Gas Company)
) D. T. E. 00-99

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Boston this May 23, 2001.

Alexander J. Cochis

Assistant Attorney General

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1. On December 21, 1995, the Company filed with the Department copies of a Precedent Agreement between Bay State and PNGTS signed in June of 1995. Bay State holds a beneficial interest in the PNGTS partnership through a wholly owned subsidiary, Natural Gas Development Corporation. Tr. p. 9; RR-AG-1. The matter was docketed as D.P.U. 95-125. According to a review of the Department's docket, there was no ruling on this agreement. In January 1998 Bay State submitted to the Department for approval copies of two firm gas transportation contracts with the PNGTS. The Department approved the transportation agreements pursuant to G.L. c. 164, §§ 94A and 94B on March 30, 1998 with certain important qualifications. In granting this approval the Department expressly stated that the approval did not represent a finding of prudence or that the contracts are in the public interest. Letter Order, D.T.E. 95-125 (1998). Copies of the relevant agreements are included as part of Exh. BSG-1, Appendix A.

2. The Company's witness testified that neither the Precedent Agreement nor the firm transportation agreements contained any provision that would permit the Company to review, approve, modify or terminate its contractual obligations due to changes in the estimated costs of the PNGTS pipeline. Exh. BSG-1, Appendix A; Tr. pp. 18-22. The witness ultimately agreed that it was not in the public interest to expose ratepayers to open ended costs. Tr. p. 23.

3. It should be noted that while the Attorney General submits that the facts and circumstances attending this contract require the disallowance of any recovery of associated stranded costs, his arguments here should not be interpreted to suggest that stranded pipeline costs should otherwise be considered to be recoverable from consumers.

4. The demand forecast prepared in 1994 underlying the SAGE analysis "crashed, thus the forecast data . . . was lost and non-retrievable." DTE-2-5; RR DTE-4; Tr. pp. 139-140.